

BEFORE ED ARGENBRIGHT, SUPERINTENDENT OF
PUBLIC INSTRUCTION FOR THE STATE OF MONTANA

IN RE: THE APPEAL OF)
)
IRENE D. SORLIE)
) DECISION AND ORDER

This is an Administrative Appeal from a decision rendered by the Yellowstone County Superintendent of Schools, dated March 26, 1981. Following notice of appeal, timely filed by the Appellant, a notice and schedule of this matter was served on all parties. The parties hereto, represented by counsel, have had an opportunity to brief the matter in accordance with that schedule and have orally argued their position before the State Superintendent of Public Instruction on September 10, 1981. The State Superintendent now renders his decision.

There was no dispute below relative to the basic facts presented by this case. Irene D. Sorlie was employed by School District No. 2 in 1951, as a classroom teacher and taught until 1978, when she was offered and accepted an administrator's contract to perform the duties of Coordinator of Intermediate Education. On March 31, 1980, the School District notified Mrs. Sorlie of her re-employment for the 1980-81 school year, which Mrs. Sorlie accepted. On May 5, 1980, the initial mill levy was not approved by the voters of Yellowstone County. A new reduced mill levy was approved by the voters on June 16, 1980. On June 27, 1980, Mrs. Sorlie was advised by the School District, that she would be assigned as a fourth (4th) grade teacher, and on July 11, at her request, she was assigned and accepted a position as a second (2nd) grade teacher "at a salary approximately \$3,000.00 less per year."

On July 13, 1980, she advised the School District that such an assignment was both a demotion as to salary and position. Mrs. Sorlie

requested the reasons for her demotion in service. A hearing was held before the Board of Trustees on September 16, 1980, where the Trustees reaffirmed their earlier decision to reassign Mrs. Sorlie to the classroom and reduce her salary. Mrs. Sorlie appealed the matter to the Yellowstone County Superintendent of Schools, who held a hearing on December 19, 1980.

This appeal is governed by the Montana Administrative Procedures Act, § 2-4-704, M.C.A., which provides:

Standards of review. (1) The review shall be conducted by the court without a jury and shall be confined to the record. In cases of alleged irregularities in procedure before the agency not shown in the record, proof thereof may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.

(2) The court may not substitute its judgement for evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record;
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or
- (g) because findings of fact, upon issues essential to the decision were not made although requested.

The State Superintendent applies this scope of review to the decision of the County Superintendent.

Was Mrs. Sorlie entitled to the protection of the Montana State Tenure Statutes in her administrative position as Coordinator of Intermediate Education. The State Superintendent finds error in all three conclusions of law determined by the County Superintendent.

Section 20-1-101, M.C.A., provides that a teacher is one who:

"is employed by a District as a member of its instructional, supervisory, or administrative staff."

Clearly, from the facts presented to the County Superintendent, Mrs. Sorlie did acquire tenure as a teacher. In fact, both parties do not disagree with this legal conclusion. Further, in view of this State statute, I hold as a matter of law that the position of elementary teacher is comparable to the position of Coordinator of Intermediate Education, for purposes of tenure.

Clearly, under the facts presented to the County Superintendent, Mrs. Sorlie did acquire tenure as a teacher for her service of almost twenty continuous years to the Yellowstone County Elementary Districts. See § 20-4-203 M.C.A.

Finally, in view of my reversal of the earlier two conclusions of law, it follows that the Elementary School District did violate the tenure rights of Irene D. Sorlie by reducing her salary for 1980-81. Mrs. Sorlie, as I have held, did acquire tenure as a teacher. Her reassignment to a teaching position was not a violation of her tenure rights, however the reduction in salary was. See §20-4-203 M.C.A. The statute is clear, and for the school year 1980-81 Mrs. Sorlie was re-elected at the same salary as that provided by the last executed contract.

I conclude by noting that the statute provides sufficient flexibility for administrators to deal with reorganizational needs as well as providing some protection and assurances to those who are able to serve the School District in administrative or supervisory positions.

To the extent that this decision is inconsistent with the appeal of Gordon Halverson rendered at the conclusion of my predecessor's term, it is expressly overruled.

Based on the foregoing, the decision of the Yellowstone County Superintendent is hereby reversed and the appellant is to have her contract at the same salary as that provided by her last executed contract.

DATED SEPTEMBER 28, 1981

BEFORE THE STATE OF MONTANA
SUPERINTENDENT OF PUBLIC INSTRUCTION

In the matter of the Appeal of)
JAMES C. HOLTER) DECISION AND ORDER

This Appeal is by a tenure teacher, James C. Holter, in the Nashua school system who has appealed the decision of the Valley County Superintendent of Schools affirming his termination by the Board of Trustees of Valley County School District No. 13. The Conclusions of Law issued by the Valley County Superintendent of Schools cited §20-4-203 and §20-3-204 Montana Code Annotated (hereinafter referred to as M.C.A.). That Appeal was pursuant to §20-3-210 M.C.A. This Appeal is pursuant to §20-3-107 M.C.A.

The Appellant and Respondent have submitted briefs and the case is considered submitted for decision.

The Appellant, Mr. Holter, was an instructor in the Nashua schools for 7th grade English and science. The record reflects that in school year 1980-81, Mr. Holter had acquired tenure by receiving his fourth contract at the Nashua schools.

The record reflects that Mr. Holter was certified to teach K-12 health and physical education. He was certified to teach in no other areas, yet he did also teach junior high math, science, and English for the district. The record reflects that over the past four years since Mr. Holter was employed as a teacher, the enrollment at the Nashua school dropped from approximately 285 to 215 students. It was anticipated that further decreases in enrollment would occur. Based on the reduction in enrollment, the school district decided to institute its reduction in force policy.

The issue whether or not a reduction in force was proper in this case has not been disputed by the parties.